

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS

BIJU MUKRUKKATTU JOSEPH, <i>et al.</i> ,)	
)	
Plaintiffs,)	
v.)	Civ. No. 1:13-cv-00324-RC-ZJH
)	
SIGNAL INTERNATIONAL LLC, <i>et al.</i> ,)	
)	
Defendants.)	

**SUPPLEMENTAL RESPONSE OF PLAINTIFFS TO BURNETT'S REASSERTED
MOTION TO DISMISS PURSUANT TO FED. R. CIV. P. 12(b)(6)**

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Defendants Malvern C. Burnett, The Law Offices of Malvern C. Burnett, A.P.C., and Gulf Coast Immigration Law Center, L.L.C. (collectively “Burnett”) reasserted their Motion to Dismiss under Fed. R. Civ. P. 12(b)(6) (ECF No. 69) for alleged failure to state a claim, arguing *inter alia* that Plaintiffs’ state law claims should be dismissed on statutes of limitations grounds because those limitations periods allegedly were not tolled during the pendency of the *David* putative class action, in which Plaintiffs were absent class members. *David v. Signal Int’l, LLC*, No. 2:08-cv-01220-SM-DEK (E.D. La.). Burnett moved to reassert this motion (and a motion pursuant to Fed. R. Civ. P. 12(b)(2)) following this Court’s Order, dated January 16, 2014 (ECF No. 67), denying as moot all Motions to Dismiss filed by Burnett due to the filing of Plaintiffs’ Second Amended Complaint (ECF No. 64). In response, Plaintiffs reasserted all Responses and Sur-Replies in Opposition to Burnett’s reasserted Motions to Dismiss. (ECF No. 73.)

Plaintiffs now respectfully file this Supplemental Response in Opposition to Burnett’s reasserted Motion to Dismiss under Fed. R. Civ. P. 12(b)(6) based on information that is dispositive of one of Burnett’s arguments. Specifically, Burnett argues that the statutes of limitations for Plaintiffs state law claims were not tolled during the pendency of the *David* case as a putative class action. But Burnett has neglected to inform the Court that he consented to the tolling of the statutes of limitations for these very state law claims. The *David* plaintiffs filed a consent motion reciting the consent to tolling—including for the state law claims—supplied by each of the defendants, including “Ralph Alexis on behalf of the Burnett Defendants at 10:08 a.m. CST” on January 17, 2011. (*David*, ECF No. 981 at 3.) Judge Zainey noted Burnett’s consent in his Order. (*David*, ECF No. 982 at 2.) Burnett therefore is judicially estopped from arguing that Plaintiffs’ state law claims were not tolled during the pendency of the *David* action.

As the Fifth Circuit stated, “a party cannot advance one argument and then, for convenience or gamesmanship after that argument has served its purpose, advance a different and inconsistent argument.” *Hall v. GE Plastic Pac. PTE Ltd.*, 327 F.3d 391, 397 (5th Cir. 2003) (quoting *Hotard v. State Farm Fire & Cas. Co.*, 286 F.3d 814, 818 (5th Cir. 2002)). Here, Burnett is estopped from arguing Plaintiffs’ claims were not tolled because his position is “clearly inconsistent with [his] previous one,” and he “convinced the court to accept that previous position.” *Id.* at 396 (citation omitted). Burnett should be allowed neither to renege on his agreement nor to “‘play[] fast and loose’ with the courts.” *Id.* (citation omitted).

Because Burnett consented to the tolling of the statutes of limitations for these state law claims, and for the reasons outlined in Plaintiffs’ reasserted Responses and Sur-Replies in Opposition, Plaintiffs respectfully request that Burnett’s reasserted Motion to Dismiss Pursuant to 12(b)(6) be denied in its entirety.

DATED: March 25, 2014.

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CERTIFICATE OF SERVICE

I hereby certify that on March 25, 2014, I electronically filed the foregoing **SUPPLEMENTAL RESPONSE OF PLAINTIFFS TO BURNETT'S REASSERTED MOTION TO DISMISS PURSUANT TO FED. R. CIV. P. 12(b)(6)** with the Clerk of the Court using the ECF system, which sent notification of an electronic filing to all CM/ECF participants.

I further certify that on March 25, 2014, I served a true and correct copy of the foregoing document upon the below-named Defendants by depositing a copy of same in the U.S. Mail, with sufficient postage thereon to insure delivery, and properly addressed as follows:

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